United Nations CED/C/BFA/CO/1/Add.1

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
13 April 2017
English
Original: French
English, French and Spanish only

Committee on Enforced Disappearances

Concluding observations on the report submitted by Burkina Faso under article 29 (1) of the Convention

Addendum

Information received from Burkina Faso on follow-up to the concluding observations*

[Date received: 23 March 2017]

* The present document is being issued without formal editing.

GE.17-06040 (E) 030517 090517

1706040

Please recycle

I. Introduction

1. In response to the priority recommendations of the Committee on Enforced Disappearances contained in the concluding observations of the Committee, following the presentation, on 8 and 9 March 2016, of the initial report of Burkina Faso on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance, Burkina Faso wishes to address the recommendations set out in paragraphs 10, 14 and 32 of the concluding observations adopted by the Committee on 16 March 2016.

II. Information relating to paragraph 10 of the concluding observations

Paragraph 10

The Committee encourages the State party to expedite the process of amending the law establishing the National Human Rights Commission so as to make the Commission fully independent and to allocate to it sufficient human and financial resources to enable it to function properly, in full conformity with the Paris Principles. It invites the State party to include the issue of enforced disappearances explicitly in its mandate.

2. In the interests of promoting the National Human Rights Commission, the National Assembly of Burkina Faso adopted Act No. 001-2016/AN on the establishment of the National Human Rights Commission in Burkina Faso on 24 March 2016. This legislation introduced significant innovations that enhance the Commission's effectiveness and independence in accordance with the Paris Principles. These innovations include:

- The reaffirmation of the Commission's administrative and financial autonomy and its independence of action in relation to other State institutions;
- The irremovability of members of the Commission for the duration of their term of office and the restriction of their numbers to 11;
- Gender mainstreaming in the composition of the Commission and the Office;
- The recognition of the Commission's extensive powers in the area of human rights, with the right of unrestricted access to places of detention and deprivation of liberty;
- The decentralization of the Commission's services across the national territory with the establishment of regional offices;
- Enabling the Commission to recruit its own staff, no more than a quarter of whom may be members of the civil service.

3. The process of making the Commission operational is under way with the establishment of a mechanism for the appointment of new members and the adoption, on 9 March 2017, of a decree on the organization and functioning of the Commission.

4. In accordance with Act No. 001-2016/AN, the Commission has a broad mandate for the promotion and protection of human rights. Its powers therefore cover all the rights recognized in national legislation and in the international and regional instruments to which Burkina Faso is a party. The powers of the Commission include enforced disappearance, although the offence is not explicitly mentioned in its remit. For example, article 5 of Act No. 001-2016/AN stipulates that the Commission may, inter alia, "receive individual and collective complaints concerning all allegations of human rights violations and may launch inquiries into human rights violations." The Commission must also "contribute to the safeguarding of human rights in places of deprivation of liberty by making regular announced and unannounced visits to such places and by making recommendations to the competent authorities." All these provisions contribute to the fight against arbitrary detention and enforced disappearance.

III. Information relating to paragraph 14 of the concluding observations

Paragraph 14

The Committee recommends that the State party expedite the amendment of the Criminal Code designed to implement the Convention with a view to defining and criminalizing enforced disappearance as a separate offence, in accordance with the definition in article 2 of the Convention, punishable by appropriate penalties which take into account its extreme seriousness, while excluding the death penalty.

5. The Committee's recommendation that Burkina Faso criminalize enforced disappearance as a separate offence is in the process of being implemented. Advocacy work has been undertaken with a view to defining and criminalizing enforced disappearance as a separate offence in the new Criminal Code, which is currently under review.

6. With regard to the non-imposition of the death penalty for acts of enforced disappearance, it should be noted that, for a number of years, the country has been moving towards the abolition of capital punishment. In Burkina Faso, the death penalty has not been imposed for ordinary crimes since 1978 or military crimes since 1988. Recent criminal legislation, such as Act No. 015-2014/AN on the Protection of Children in Conflict with the Law or At Risk, of 13 May 2014, and Act No. 022/AN on the Prevention and Punishment of Torture and Related Practices, of 27 May 2014, does not provide for the death penalty. In that connection, advocacy work has also been undertaken with a view to abolishing the death penalty under the new Criminal Code. The preliminary bill on the Criminal Code, which is being finalized, no longer provides for the death penalty as a criminal sanction, irrespective of the seriousness of the crime committed.

IV. Information relating to paragraph 32 of the concluding observations

Paragraph 32

The Committee encourages the State party to take the necessary measures to provide in its criminal legislation for a specific remedy that would allow all categories of persons covered by the Convention to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful, in accordance with the provisions of article 17 (2) (f) of the Convention and other relevant international standards.

7. Under the legislation of Burkina Faso, there are a number of laws to combat arbitrary and illegal detention. Article 3 of the Constitution states that "no one may be deprived of his or her liberty unless he or she has been charged with an offence punishable by law." Article 2 stipulates that "no one may be arrested, held in custody, deported or exiled except as provided for by law." In addition, articles 144, 146, 147 and 148 of the Criminal Code provide for action against illegal detention. Thus, in accordance with article 146 of the Criminal Code, "public officials responsible for administrative or criminal police investigation who knowingly refuse or fail to report or put an end to unlawful or arbitrary detention in any location are liable to a prison term of 1 to 5 years." Article 144 grants victims of unlawful detention the right to redress by providing that unlawful detention "may entail the payment of damages and interest which may not be less than 10,000 CFA francs per day of unlawful detention, per person." Article 147 increases the penalties against unlawful detention, providing that "persons in charge of places of detention are guilty of arbitrary detention and sentenced to a prison term of between 6 months and 2 years and a fine of between 50,000 and 600,000 CFA francs if they:

- Admit an individual without a detention order or court ruling or, in cases of expulsion or extradition, without a government order;

- Detain or refuse to present a person to a criminal investigation police officer or to a person acting on his or her orders;
- Refuse to show their custody registers to any authority mandated to monitor them."

8. Likewise, article 148 provides that "prison terms of 1 to 5 years shall be handed down to:

- State prosecutors, public prosecutors, their deputies, judges and criminal investigation police officers who detain, or order the detention of, a person outside designated detention facilities and contrary to the conditions laid down by law;
- State prosecutors, public prosecutors, their deputies and judges who bring a person before a criminal court without first bringing formal charges against him or her."